



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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PUBLIC SESSION MINUTES

June 22, 2000

Chair Martin, Vice Chair Franzese, Commissioner Ware, Commissioner Lederman, Counsel Wyse, Senior Staff, and Deputy Legal Director Nedda Gold Massar were present.

1. Open Public Meetings Statement

Chair Martin called the meeting to order and announced that pursuant to the "Open Public Meetings Act," N.J.S.A. 10:4-6 et seq., adequate notice of the meeting of the Commission had been filed with the Secretary of State's Office and distributed to the entire State House Press Corps.

The meeting convened at 11:00 a.m. in Trenton, New Jersey.

2. Advisory Opinion Request No. 02-2000

This Advisory Opinion Request had been submitted by Clela D. Mitchell, Esq., counsel to eContributor.com, Inc. Ms. Mitchell's query concerned the legality of New Jersey candidates and committees raising money via Internet contributions. Ms. Mitchell's client, eContributor.com, Inc. is in the business of providing candidates and committees with Internet fundraising services.

Ms. Mitchell stated that eContributor.com, Inc. currently provides its Internet contribution services to federal and state candidates, political parties, and other entities, but that the corporation has not begun to offer such services to candidates or committees in New Jersey. Ms. Mitchell explained that the corporation's system permits a contributor to create a personal account that "stores the profile information about the user," including the contributor's name and address, occupation, employer, phone number, and e-mail address. The system also accommodates corporate and union contributors by recording the name and address of the contributing entity and the person authorized to make its contributions.

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According to Ms. Mitchell, eContributor.com, Inc. will provide all of the services necessary to permit a candidate or committee to receive contributions over the Internet, “including establishing client web site(s) and links between the client’s and eContributor.com’s web sites, processing credit card payments, transferring funds, and providing data necessary” for reporting pursuant to the Commission’s Regulations. The corporation charges fees for its services according to a fee schedule.

Deputy Legal Director Massar indicated that staff recommended that New Jersey candidates and committees may only use the services of eContributor.com, Inc. to accept contributions by electronic transfer of funds over the Internet if the eContributor.com, Inc. process follows New Jersey statutory and regulatory requirements. Based upon the Campaign Reporting Act and Commission regulations, Ms. Massar recommended that, among other requirements, eContributor.com, Inc. be advised that the following should be part of the process for acceptance of contributions over the Internet:

- Contribution funds from different candidates and committees may not be commingled in a single account as proposed by eContributor.com, Inc. There must be a separate account for the funds of each New Jersey candidate or committee. She explained that the requirement for a separate account guarantees a candidate access to and control over his or her funds and establishes an audit trail.
- Contributions to a New Jersey candidate or committee must be deposited into the candidate’s or committee’s depository account within ten days of receipt of the contribution.
- The name of the New Jersey candidate or committee that received the Internet contribution must appear on the contributor’s account statement. It is not sufficient that the name of eContributor.com, Inc. appear on the account statement without the name of the recipient candidate or committee.
- eContributor.com, Inc. must immediately provide the candidate or committee with contributor information so that the candidate or committee can observe all reporting requirements and the candidate or committee must be able to generate written records of that contributor information.
- eContributor.com, Inc. must provide the New Jersey candidate or committee receiving Internet contributions with transactional reports to serve as the equivalent of bank deposit slips and statements.

Ms. Massar explained that the issue of whether or not a gubernatorial candidate may submit a contribution received via the Internet for match with public funds was raised in comments submitted by Ms. Mitchell to the Commission’s “Sunset” amendments to the regulations. Ms. Massar recommended that the Commission find that it is permissible to match contributions received over the Internet with public funds if the existing public financing requirements and the following are observed:

- The requirement to obtain the contributor’s signature be retained because it is reasonable to maintain a higher recordkeeping requirement where taxpayer funds are distributed to candidates.

- The Campaign Reporting Act requires that a gubernatorial matching fund account be maintained in a national or state bank. Staff also recommended that gubernatorial candidates be permitted to maintain more than one matching fund account.
- The process for receipt of Internet contributions must provide a record equivalent to a bank deposit slip to confirm that the contribution received via the Internet has been deposited into the gubernatorial candidate's account.

Ms. Cleta Mitchell, counsel for eContributor.com, Inc. participated in the discussion by telephone, as did Ms. Lynn Ellsworth of the company.

Ms. Mitchell indicated that it was not a problem for eContributor.com, Inc. to create separate accounts but that it may be a problem for smaller campaigns to establish merchant accounts. She said that it requires sufficient collateral to establish these accounts. Ms. Mitchell asserted that in order to receive contributions over the Internet, commercial processing accounts must be established and that there are no economies of scale when separate accounts are established for each candidate. Ms. Mitchell assured the Commission that the eContributor.com, Inc. process provides a full and complete record of all financial transactions.

Commissioner Ware suggested that eContributor.com, Inc. provide the Commission staff with further information and perhaps meet with staff to determine if a solution can be found. Ms. Mitchell and Ms. Ellsworth agreed and formally requested an extension of time to the July 2000, Commission meeting for the Commission to consider the Advisory Opinion Request.

The Commission agreed to the extension, pending receipt of a fax request from Ms. Mitchell.

Commissioner Lederman said that the Commission should insure that it obtains proper disclosure and upholds the Campaign Act but at the same time facilitates Internet fundraising by campaigns. She noted that the advantage of Internet fundraising is that it can reduce the cost of raising money.

On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission determined to grant an extension for the consideration of the Advisory Opinion Request.

The Commission directed staff to obtain the following additional information from eContributor.com, Inc. in order to further consider the Advisory opinion request: a list of candidates who are currently using the services of eContributor.com, Inc.; a list of the states or jurisdictions that have approved the eContributor.com, Inc. procedures; the names of any candidates receiving public matching funds who are using the services of eContributor.com, Inc.; the corporate annual report issued by eContributor.com, Inc.; a sample of the financial reports (e.g., bank statements, transactional reports) of contributions eContributor.com, Inc. provides to its client candidates; information concerning the frequency of the financial reports eContributor.com, Inc. provides to client candidates; a sample contract used by

eContributor.com, Inc. to provide services to a client candidate; a description of procedures to be followed if there is a dispute between eContributor.com, Inc. and a client candidate; the terms of the agreements between eContributor.com, Inc. and the banks where its merchant accounts are established; and, information concerning the fees charged by eContributor.com, Inc. to its client candidate and fees charged by any merchant banks, processors, or other participants in the Internet contribution process.

3. Approval of Public Session Minutes of May 15, 2000

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission approved the Public Session Minutes of May 15, 2000.

4. Executive Director's Report

A. Former Commissioner Elliot Mayo

Executive Director Frederick M. Herrmann reported that former Commissioner Mayo passed away in early May. According to the Executive Director, the former Commissioner had served on the Commission from September 1989 to December 1990. He had been on the Metuchen City Council (1968-1973) and on the Middlesex County Board of Chosen Freeholders (1973-1975). Executive Director Herrmann mentioned that, moreover, Commissioner Mayo had been very involved in various religious, charitable, and civic associations. The Executive Director said that he will be remembered at ELEC for his kindness and affable manner as well as his dedication to making sure that local committees were dealt with in a fair and reasonable manner. Executive Director Herrmann said that he was a true champion of the "Little Guy."

B. Recomputerization

Executive Director Herrmann announced that ELEC has been awarded a "certificate of appreciation" for its "computer project initiative program" by the Public Employees Roundtable, a national organization. He added that the certificate was given as part of the Roundtable's Public Service Excellence Awards Program. According to the Executive Director, ELEC's web site was the focal point for the Commission's recognition.

C. Staff Activities

Executive Director Herrmann said that Director of Compliance and Information Evelyn Ford has introduced new mailers to provide information to candidates and treasurers. He noted that they contain a window for a personalized address and room for the compliance manual to be enclosed.

The Executive Director announced that Director of Systems Administration Carol Neiman has become a member of the COGEL Technology Committee. Executive Director Herrmann said that she will be working with its other members on various issues affecting COGEL including the ongoing improvement of COGEL's web site.

The Executive Director advised the Commission that he recommended her because of the extraordinary skills she has developed creating ELEC's award winning web site.

The Executive Director reported that staff has received all necessary approvals to move into about one-third of the 14th floor. Executive Director Herrmann informed the Commission that it is anticipated that this contiguous space will be used for the Review and Investigation Section and Gubernatorial Public Financing staff. He said that additional space in the basement has also been secured for storing ELEC's non-daily files and various supplies.

According to Executive Director Herrmann on May 16, 2000, he followed in the footsteps of Commissioner Lederman and was the guest speaker at a Legislative Staff Seminar at the State House Annex. He added that he lectured on the role of ELEC and the elements of campaign finance reform. The Executive Director advised the Commission that the spring edition of the COGEL Guardian has a very favorable review of Deputy Director Jeffrey Brindle's most recent white paper Trends in Legislative Campaign Financing 1987-1997.

Executive Director Herrmann reported that on May 25, 2000, he spoke to a group of students from College Leadership New Jersey about ELEC and New Jersey's campaign finance system.

Executive Director Herrmann added that on June 12, 2000, he met with Vladimir Pran, who was visiting the United States as the representative of Croatia's "Citizens Organized to Monitor Elections." The Executive Director noted that they discussed campaign financing issues and how to structure an effective elections agency. He said that he gave him a number of ELEC publications to take back to his country including: the annual report, the most recent white paper, ELEC's annual survey of the lobbying law, the COGEL Campaign Financing and Lobbying Bibliography, and an article on how to structure and ethics agency written by the Executive Director.

D. Summer Meeting Schedule

- July 18, 2000 at 11:00 a.m. in Trenton
- August 21, 2000 at 11:00 a.m. in Trenton (if necessary)
- September 18, 2000 at 11:00 a.m. in Trenton

5. Sunset Regulation Readoption and Amendments

Under the "Sunset" requirements of Executive Order No. 66 (1978), the Commission is required to readopt all its regulations by August 16, 2000. A notice of Proposed Readoption was approved by the Commission at its March 13th meeting. The Notice, containing amendments, was published in the New Jersey Register on April 17th. A public hearing was conducted on May 15th. In addition, notice to the press and public was circulated, and the full text of the proposal was posted on the Commission's Internet site. Legal Director Nagy noted that there have been over 600 "hits" to the Sunset proposal on the ELEC Website. Because the legislative review and the comment periods have expired, the proposed readoption and amendments are in a position to be permanently adopted.

At this time, Legal Director Nagy recommended that the Readoption with Amendments be adopted without change as proposed by the Commission. A transcript of the public hearing and a summary of the oral and written testimony were provided to the Commission. The Commission also reviewed and discussed its responses to the comments.

On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission adopted the Sunset Regulation Readoption and Amendments and directed staff to file the adoption with the Office of Administrative Law.

6. Guidelines on Public Disclosure of Commission Documents

Staff recommended amendments to the “Guidelines on Public Disclosure of Commission Documents.” Legal Director Nagy explained that the changes are intended to update the Guidelines to delete references to obsolete practices, to describe new procedures, to correct typographical errors, and to insert references to information available on the ELEC Website. The “Guidelines,” which were last amended on March 25, 1997, contain the Commission’s procedures for release to the public of investigative reports, final decision recommendations, complaints, final decision, executive session minutes, letters of correction, “no action” letters, miscellaneous correspondence, and advisory opinions.

The following changes were proposed:

- Delete obsolete references to “admonishments,” which are no longer used and have been replaced by letters of correction (pp. 2 and 4);
- Delete an obsolete reference to the “fine scale” (p. 2);
- Insert references to release of complaints and final decisions in the Commission’s public room and on the Commission’s web site (p. 3);
- Insert procedures for release of a complaint that has been amended pursuant to an order of an Administrative Law Judge in a contested case pending before the Office of Administrative Law (p. 3); and,
- Acknowledge that investigative reports and Executive Session Minutes may be subject where appropriate to produce discovery and that certain information may be redacted because it is privileged or otherwise protected (pp. 2 and 4).

Commissioner Ware suggested that guidelines regarding procedures for Commission members contacted by the media should be included in these guidelines. The Commission decided to consider media guidelines separately. Counsel Wyse will review this matter.

On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission adopted the amendments to the Guidelines on Public Disclosure of Commission Documents.

7. Resolution to go into Executive Session

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On a motion by Commissioner Ware, seconded by Vice Chair Franzese and passed by a vote of 4-0, the Commission resolved to go into Executive Session to discuss the following matters which will become public as follows:

- A. Final Decision Recommendations in violation proceedings which will not become public. However, the Final Decisions resulting from those recommendations will become public no later than 35 days after mailing.
- B. Investigative Reports of possible violations, which reports will not become public. However, any complaint generated as the result of an Investigative Report will become public no later than 50 days after mailing.

8. Return to Public Session

Adjournment

On a motion by Vice Chair Franzese, seconded by Commissioner Ware and passed by a vote of 4-0, the Commission voted to adjourn at 1:00 p.m.

Respectfully submitted,

Frederick M. Herrmann, Ph.D.
Executive Director

FMH/elz